



DEPARTMENT OF VETERANS AFFAIRS

8320-01

Summary of Precedent Opinion of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Office of the General Counsel (OGC) involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in claim matters involving the same legal issue. This summary is published to provide the public and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Suzanne Hill, Law Librarian, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-7624.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential, and 38 CFR 14.507(b) specifies that precedent opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The

interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees in all adjudications and appeals involving the same legal issues in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel or a judicial decision.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist Veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the Internet at <http://www.va.gov/ogc/precedentopinions.asp>.

VAOPGCPREC 3-2019

Questions Presented:

1. Who is eligible to file a claim as a “survivor” under the effective date provision of the Blue Water Navy Vietnam Veterans Act of 2019 (“the BWN Act”), Pub. L. 116-23, to be codified at 38 U.S.C. 1116A(c)?
2. Does the BWN Act authorize the Department of Veterans Affairs (VA) to pay estates, as if they were eligible payees under the Final Stipulation and Order in *Nehmer v. United States Veterans Admin.*, No. CV-86-6160 (N.D. Cal. 1991) (“the *Nehmer* stipulation”)?

3. Are veterans or their survivors who were granted disability compensation or survivor benefits under *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019), potentially eligible for earlier effective dates under the *Nehmer* stipulation or under the BWN Act?

Held:

1. As used in 38 U.S.C. 1116A(c), the term “survivors” refers to those relatives of veterans who are eligible for dependency and indemnity compensation (DIC) and/or accrued benefits under title 38, United States Code.

2. The BWN Act does not authorize VA to pay benefits to estates of claimants. The BWN Act did not adopt or extend the *Nehmer* court rulings authorizing payments to estates of certain benefits payable under the *Nehmer* stipulation. No other provisions of title 38, United States Code, authorize VA to pay benefits under 38 U.S.C. 1116A to estates of claimants.

3. The *Nehmer* stipulation operates to void a final decision on a veteran’s or survivor’s benefits claim only when the Secretary of Veterans Affairs establishes a new presumption of service connection pursuant to the Agent Orange Act of 1991, Pub. L. 102-4, codified at 38 U.S.C. 1116(b). The *Procopio* decision does not establish a new presumption pursuant to the process described in section 1116(b) and accordingly does not provide authority for VA to void final decisions on benefits claims. A veteran or survivor who is granted benefits under the *Procopio* rule and whose claim for the same condition was previously denied on

or after September 25, 1985, may be entitled to a retroactive award if he or she submits a claim for such award in accordance with the BWN Act.

Effective Date: December 13, 2019.

William A. Hudson, Jr.

Acting General Counsel

Department of Veterans Affairs.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on December 23, 2019, for publication.

Jeffrey M. Martin,
Assistant Director,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

[FR Doc. 2020-00027 Filed: 1/6/2020 8:45 am; Publication Date: 1/7/2020]